

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

RAYMOND L. SALTSMAN, JR.,

Plaintiff,

vs.

VALMONT INDUSTRIES, INC.,

Defendant.

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8:05CV238

ORDER

This matter is before the court on defendant's MOTION TO COMPEL DISCOVERY (#25). On March 17, 2006, defendant served interrogatories and requests for production of documents on the plaintiff. The plaintiff did not timely respond to the requests, and did not answer defense counsel's written inquiries as to when responses would be submitted.¹

In response to defendant's motion, plaintiff filed a "Notice of Compliance" advising that his responses to defendant's Interrogatories and Requests for Production of Documents were mailed to defense counsel on May 15, 2006.

Under these circumstances, I find that the Motion to Compel should be denied as moot, without prejudice to the defendant contesting the adequacy of plaintiff's responses.

I further find that the circumstances of this incident would make an award of expenses unjust and decline to award costs or fees to the defendant. *See* Fed. R. Civ. P. 37(a)(4)(B).

IT IS SO ORDERED.

DATED June 5, 2006.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**

¹Local Rule 7.1(i), governing discovery motions, requires counsel for the moving party to make a written showing that, after "personal consultation" with counsel for opposing parties and sincere attempts to resolve differences, they are unable to reach an accord. "Personal Consultation" includes person-to-person conversation, either in the physical presence of each counsel or on the telephone. An exchange of letters, faxes, voice mail messages, or e-mails between or among counsel may also constitute personal consultation for purposes of NECivR 7.1(i) upon a showing that person-to-person conversation was attempted by the moving party and thwarted by the non-moving party. It does not appear that moving counsel engaged in personal consultation with defense counsel in this matter.